IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 8, 2006 Session

STATE OF TENNESSEE v. ANTONIO D. IDELLFONSO-DIAZ

Direct Appeal from the Criminal Court for Davidson County
No. 2005-B-1061 Monte Watkins, Judge

No. M2006-00203-CCA-R9-CD - Filed November 1, 2006

The appellant, State of Tennessee, charged the appellee, Antonio D. Idellfonso-Diaz, with two counts of first degree premeditated murder and one count of first degree felony murder. In this interlocutory appeal, the State argues that the trial court erred by ruling that the appellee could present expert testimony at trial about his diminished mental capacity at the time of the crimes. Upon review of the record and the parties' briefs, we reverse the judgment of the trial court and remand the case for further proceedings consistent with this opinion.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Criminal Court is Reversed and Case Remanded.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and J.C. MCLIN, JJ., joined.

Amy Harwell and Kathy Evans, Nashville, Tennessee, for the appellee, Antonio D. Idellfonso-Diaz.

Paul G. Summers, Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Jeff Burkes and Roger Moore, Assistant District Attorneys General, for the appellant, State of Tennessee.

OPINION

I. Factual Background

The underlying facts in the case are scarce. However, the record reflects that on January 5, 2004, the then seventeen-year-old appellee was a passenger in a pickup truck being driven by Eliseo Quintero. Quintero either hit or thought he hit Tracy Owen, who had been walking or standing on the side of the road, with his pickup. He and the appellee returned to the scene, and the appellee shot Owen, who was pregnant, several times. The State charged the appellee with the first degree premeditated murder of Owen and the first degree premeditated and felony murders of her unborn child. Subsequently, the appellee filed written notice of his intent to call a psychiatric expert to testify at trial, and the State filed a motion in limine, requesting that the trial court prohibit the

appellee from presenting any expert testimony regarding the appellee's mental state at the time of or after the crimes.

In a hearing on the State's motion, Dr. William Bernet testified that he was a full-time faculty member in the Department of Psychiatry at Vanderbilt University School of Medicine and conducted a pretrial psychiatric evaluation of the appellee to assess the appellee's ability to form the requisite mental state for the crimes and to investigate issues related to mitigation. In conducting his evaluation, Dr. Bernet interviewed the appellee through an interpreter for two and one-half hours on August 3, 2005, and arranged for the appellee to have magnetic resonance imaging (MRI), positron emission tomography (PET), and electroencephalogram (EEG) scans of the brain. He also arranged for the appellee to have genetic testing and reviewed some of the appellee's psychiatric and medical records from Mexico and the Middle Tennessee Mental Health Institute (MTMHI). In the spring of 2004, doctors at the MTMHI had diagnosed the appellee with post-traumatic stress disorder (PTSD) and "adjustment disorder with mixed anxiety and depressed mood." MTMHI doctors also had diagnosed the appellee with "major depressive disorder, severe recurrent," meaning that the appellee was depressed at the time of his MTMHI evaluation and had a history of being depressed. Dr. Bernet agreed with the PTSD diagnosis and also diagnosed the appellee with dysthymic disorder, which he said was the same diagnoses as MTMHI's diagnosis of "major depressive disorder, severe recurrent."

Dr. Bernet testified that his diagnosis of the appellee's PTSD was based on the appellee's childhood history and previous history of abuse. The appellee's mother had been a prostitute, and the appellee had witnessed his mother having sex with various men. When the appellee was a small child, his mother essentially abandoned him, and he went to live with relatives. The appellee's grandfather beat him on many occasions, and the appellee's uncle and some cousins sexually abused him over an extended period of time. The appellee never knew his father, which made him chronically depressed. In 2003, the appellee moved from Mexico to the United States and experienced a number of psychosocial stressors such as not speaking English, being out of touch with his mother and girlfriend, having employment and financial problems, and being intimidated by his roommate. The appellee told Dr. Bernet that on the day of the crimes, he had used cocaine and had consumed ten to twelve bottles of beer. After the crimes, the appellee's PTSD intensified, and he experienced nightmares; auditory, visual, and tactile hallucinations; and flashbacks.

Dr. Bernet testified that the appellee's PET revealed a very mild brain abnormality. Genetic testing did not show that the appellee had the MAOA gene, which is the gene related to violent behavior, but revealed that the appellee had a genetic vulnerability to becoming depressed and dysfunctional, especially in stressful, crisis-type situations. He stated that nothing indicated the appellee was malingering and that he believed the appellee was intoxicated with alcohol and cocaine on the day of the crimes. Dr. Bernet stated that considered separately, the appellee's genetic vulnerability, history of abuse, multiple psychosocial stressors, depression, PTSD, intoxication, and domination by another person would not have been particularly serious. However, "all of these factors together would have impaired him, to some extent."

On cross-examination, Dr. Bernet testified that he did not obtain a copy of the appellee's videotaped statement to police and did not talk to Detectives Marvin Rivera or Robert Swisher about the case. Dr. Bernet administered the Mini-Mental Status Examination to the appellee in order to test the appellee for brain damage and dysfunction, and he acknowledged that the results of the test were normal. He also stated that nothing indicated the appellee was mentally retarded. However, MTMHI records showed that the appellee's mother, grandmother, and perhaps grandfather suffered from nerve problems and took medication, indicating a mental illness in the appellee's family. Dr. Bernet testified that although the appellee had never been diagnosed with a psychotic condition, he had a history of psychotic symptoms such as hallucinations. He stated that according to his report, the appellee drank three beers on the date of the crimes and denied using cocaine. He acknowledged that drinking only three beers would make it less likely that the appellee was suffering from alcohol intoxication at the time of the crimes and acknowledged that the appellee's denying he used cocaine would also affect Dr. Bernet's diagnosis of cocaine intoxication. Although the appellee was suffering from PTSD at the time of the crimes, Dr. Bernet did not know what symptoms of the disorder the appellee was exhibiting at the time of the shooting. Finally, he stated that "I cannot say that he totally lacked the capacity [to premeditate]. I am saying, simply, that his capacity was impaired to some extent." On redirect examination, Dr. Bernet acknowledged that he was not concluding the appellee did not premeditate the crimes but was concluding that all of the factors he had discussed "contribute[d] to this reduced ability to premeditate."

At the conclusion of Dr. Bernet's testimony, the State argued that the trial court should rule Dr. Bernet's testimony inadmissible pursuant to State v. Hall, 958 S.W.2d 679 (Tenn. 1997), and State v. Faulkner, 154 S.W.3d 48 (Tenn. 2005), because he could not say that the appellee completely lacked the capacity to premeditate the crimes. The defense argued that the testimony was admissible because it was helpful in assisting the trier of fact to determine whether or not the appellee lacked the capacity to premeditate. The trial court ruled that Dr. Bernet could testify and that the ultimate question regarding the appellee's mental state at the time of the crimes was a jury question. The State filed an application for permission to appeal pursuant to Rule 9, Tennessee Rules of Appellee Procedure, which the trial court granted on January 12, 2006. By order, this court granted the State's application for Rule 9 interlocutory review on March 3, 2006.

II. Analysis

The State argues that Dr. Bernet's testimony is "clearly inadmissible" pursuant to Hall and Faulkner because he alleges that the appellee had a reduced ability to commit the crimes, not that the appellee lacked the mental capacity to commit them. The appellee contends that Hall and Faulkner do not require an expert to testify that the appellee completely lacked the ability or capacity to form the mental capacity to commit the crimes and that Dr. Bernet's testimony would substantially assist the trier of fact in determining his mental state at the time of the offenses. We conclude that the trial court abused its discretion by ruling that Dr. Bernet's testimony is admissible.

Expert testimony regarding a defendant's capacity or lack of capacity to form the mental state required for the commission of an offense is admissible if it satisfies "general relevancy standards

as well as the evidentiary rules which specifically govern expert testimony." Hall, 958 S.W.2d at 689. In this regard, Tennessee Rule of Evidence 401 broadly provides that "'[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Even relevant evidence may be excluded, however, if its probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Tenn. R. Evid. 403. Moreover, Tennessee Rule of Evidence 702 requires that expert testimony "substantially assist the trier of fact to understand the evidence or to determine a fact in issue," and Rule 703 requires that the facts or data underlying the expert's opinion be trustworthy. A trial court's application of these rules to exclude expert testimony will not be reversed on appeal absent an abuse of discretion. State v. Edison, 9 S.W.3d 75, 77 (Tenn. 1999).

Under Tennessee law, evidence of a mental disease or defect that does not rise to the level of an insanity defense is nevertheless admissible to negate elements of specific intent. State v. Phipps, 883 S.W.2d 138, 149 (Tenn. Crim. App. 1994). In Hall, our supreme court explained "diminished capacity" as follows:

> [D]iminished capacity is not considered a justification or excuse for a crime, but rather an attempt to prove that the defendant, incapable of the requisite intent of the crime charged, is innocent of that crime but most likely guilty of a lesser included offense. Thus, a defendant claiming diminished capacity contemplates full responsibility, but only for the crime actually committed. In other words, "diminished capacity" is actually a defendant's presentation of expert, psychiatric evidence aimed at negating the requisite culpable mental state.

958 S.W.2d at 688 (citations omitted). However, "such evidence should not be proffered as proof of 'diminished capacity.' Instead, such evidence should be presented to the trial court as relevant to negate the existence of the culpable mental state required to establish the criminal offense for which the defendant is being tried." Id. at 690. Our supreme court emphasized that "'[i]t is the showing of [a] lack of capacity to form the requisite culpable mental intent [due to a mental disease or defect] that is central to evaluating the admissibility of expert psychiatric testimony on the issue.'" Faulkner, 154 S.W.3d at 56-57 (quoting Hall, 958 S.W.2d at 690).

The State contends that because Dr. Bernet did not testify that the appellee completely lacked the mental capacity to commit the crimes, his testimony is inadmissible under Hall and Faulkner. We agree. In those cases, our supreme court specifically stated that the admissibility of an expert's testimony regarding a defendant's diminished capacity requires a showing (1) that the defendant "lacked the capacity" to form the culpable mental state and (2) that he lacked the capacity due to a mental disease or defect. In the instant case, Dr. Bernet testified about the appellee's PTSD and dysthymic disorder and stated in his report that the appellee was suffering from these "serious psychiatric disorders" at the time of the crimes. However, the State and the defense asked him several times if he could say that the appellee lacked the capacity to premeditate or act intentionally,

and Dr. Bernet repeatedly stated that he could not say that the appellee lacked the capacity to form the culpable mental states but could only say that his capacity was "impaired to some extent." The fact that the appellee's mental disease impaired or reduced his capacity to form the requisite mental state does not satisfy the two-prong requirement in Hall and Faulkner. Therefore, his testimony is irrelevant and inadmissible.

III. Conclusion

Based upon the record and the parties' briefs, we conclude that the trial court erred by overruling the State's motion to prohibit Dr. Bernet from testifying about the appellee's mental capacity at the time of the crimes. The case is remanded for further proceedings consistent with this opinion.

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NORMA McGEE OGLE, JUDGE